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Federal Communications Commission  
Washington, D.C. 20554

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MM Docket No. 93-207

In the Matter of

Amendment of Section 76.51  
of the Commission's Rules  
to Include Riverside,  
California, in the Los Angeles-  
San Bernardino-Corona-Fontana,  
California, Television Market

#### NOTICE OF PROPOSED RULE MAKING

Adopted: July 2, 1993;

Released: July 15, 1993

Comment Date: August 18, 1993

Reply Comment Date: September 2, 1993

By the Chief, Mass Media Bureau:

1. Before the Commission is a petition for rule making filed May 5, 1993, by Fouce Amusement Enterprises, Inc. ("Fouce"), licensee of television station KRCA(TV), Channel 62 (Independent), Riverside, California. Fouce seeks to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California, television market to "Los Angeles-San Bernardino-Corona-Fontana-Riverside, California."<sup>1</sup>

#### BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators. See 47 CFR §76.658(m) and 17 U.S.C. §111(f). Some of the markets consist of more than one named community (a

"hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities. See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974). Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support. See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."<sup>2</sup>

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"),<sup>3</sup> which amended Section 614 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. See Section 614(f) of the Act.<sup>4</sup> The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.

#### THE PETITION

5. Fouce maintains that amendment of Section 76.51 of the Rules to include the community of Riverside as a designated community in the subject television market is warranted on an "emergency basis" to avoid "discriminatory and irrational" application of the must-carry rules to the immediate and severe detriment of KRCA. Fouce states that there can be no question that Riverside is part of the Los Angeles market.<sup>5</sup> It notes that Riverside is approxi-

<sup>1</sup> The Commission has delegated to the Chief, Mass Media Bureau, authority to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." See *Report and Order* in MM Docket No. 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

<sup>2</sup> See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Vidalia, California)*, 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

<sup>3</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>4</sup> In connection with the implementation of the broadcast signal carriage provisions of the Cable Act, the Commission concluded that a major update of Section 76.51 was not necessary based on the record then before it. Nevertheless, the Commission did make some minor revisions to Section 76.51 of the Rules, and announced that it would consider further revisions to the list of television markets on a case-by-case basis. See *Report and Order* in MM Docket No. 92-259, *supra*.

<sup>5</sup> Fouce states that because KRCA was not in operation in 1972 when the Section 76.51 market designations were determined, Riverside could not have been considered for inclusion as a designated community in the market. It maintains that the facts presented here would have resulted in the designation of Riverside as part of the Los Angeles hyphenated market when the

mately the same distance from the center of Los Angeles as San Bernardino, Corona and Fontana, the other designated communities of the market as listed in Section 76.51. Fouce also states that the community of Riverside is virtually surrounded by San Bernardino, Corona and Fontana -- in fact, Riverside's 35-mile exclusivity protection zone is virtually encompassed within the combined 35-mile zones of San Bernardino, Corona and Fontana, resulting in the anomaly of a smaller television market being wholly contained within a major market. Fouce maintains that KRCA's Grade B signal contour completely encompasses all of the designated communities in the market, and that the station provides city grade service to Los Angeles. Because the stations licensed to the listed communities also provide Grade B service throughout the market,<sup>6</sup> Fouce asserts that KRCA competes for audience and revenue in virtually the same area as the Los Angeles, San Bernardino, Corona and Fontana stations.

6. Fouce alleges that despite KRCA's competitive position in the market, because Riverside is not a designated community in the Section 76.51 market listings, the station is not considered a "local signal" for copyright purposes throughout the Los Angeles ADI in which it competes. While stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market, Fouce states that the absence of Riverside as a designated community in this market list results in KRCA's classification as a "distant signal" for market-area cable systems more than 35 miles from Riverside, including significant portions of Los Angeles and the San Fernando valley. In this regard, Fouce states that it has received notices from various cable systems within the Los Angeles ADI advising that, pursuant to Section 76.58(d) of the Commission's Rules, they will not provide mandatory carriage of KRCA unless the station agrees to reimburse over two million dollars annually in copyright royalty fees.<sup>7</sup>

7. Fouce further contends that KRCA will be at a severe competitive disadvantage unless accorded the same mandatory carriage status as the other stations licensed to communities in the subject hyphenated market. It states that the fact that KRCA is an independent station increases its competitive burden -- unlike other independent stations in the hyphenated market entitled to mandatory carriage, KRCA cannot assure program owners and advertisers of access to the entire market, which it serves over the air but needs cable carriage to reach effectively. In that regard, Fouce states that terrain features of the area make over-the-air reception difficult in various heavily populated portions of the market, necessitating cable carriage to gain equal access to viewers enjoyed by other area stations.

8. Fouce also alleges that the factors previously considered by the Commission in evaluating proposed amendments to Section 76.51 compel inclusion of Riverside in the Los Angeles hyphenated market. For example, it notes

that Riverside is closer to the center of Los Angeles than is the designated community of San Bernardino. In addition, Fouce maintains that KRCA's market will not be expanded to any significant degree, as the station's Grade B signal contour is similar to the Grade B contours of the other stations in the hyphenated market and "already extends beyond Los Angeles to the approximate limits of its 35-mile zone." Fouce states that the severe economic disadvantage it would be forced to operate under demonstrates the particularized need for redesignation of the market as proposed, and maintains that the public will substantially benefit by assured access to KRCA's independent, foreign-language and minority programming. Therefore, it asserts that redesignation of the market as proposed will not only place KRCA on a level playing field with its competitors, but will also comport with the goal of assuring that local stations have access to cable subscribers and that subscribers have access to all stations in a television market.

### DISCUSSION

9. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that KRCA and stations licensed to communities in the Los Angeles-San Bernardino-Corona-Fontana television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, Fouce's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

### ADMINISTRATIVE MATTERS

#### Ex Parte Rules -- Non-Restricted Proceeding

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

#### Comment Information

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **August 18, 1993**, and reply comments on or before **September 2, 1993**. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting

major market list was established.

<sup>6</sup> Fouce notes that KRCA's transmitter is located at the same Sunset Ridge site as those of KSCL and KZKI, both licensed to San Bernardino.

<sup>7</sup> Section 76.58(d) of the Commission's Rules required a cable operator to notify all local television stations by May 3, 1993, that they may not be entitled to mandatory carriage on the system because such carriage may cause an increased copyright

liability to the cable system. Under the provisions of Section 76.55(c)(2) of the Rules, a local commercial television station otherwise entitled to mandatory carriage need not be carried on market-area cable systems if the station is considered a "distant signal" under the copyright compulsory license (17 U.S.C. §111) and the station does not agree to indemnify the cable operator for the increased copyright liability. See *Report and Order* in MM Docket No. 92-259, 8 FCC Rcd at 2973-74.

comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

**Initial Regulatory Flexibility Analysis**

12. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

**Additional Information**

13. For additional information on this proceeding, contact Alan E. Aronowitz, Mass Media Bureau, (202) 632-7792.

**FEDERAL COMMUNICATIONS COMMISSION**

Roy J. Stewart  
Chief, Mass Media Bureau